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October 20, 1993

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Mr. William F. Caton
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Federal Communications Commission
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Washington D.C. 20554

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RECEIVED

OCT 20 1993

Re: Comments of Pacific Telecom, Inc. - RM 8334.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Mr. Caton,

Enclosed are an original and nine copies of the Comments of Pacific Telecom, Inc., in the above referenced proceeding. In the event there are any questions concerning this matter please contact the undersigned.

Very truly yours,

A handwritten signature in dark ink, appearing to read "B. D. Thomas", is written over the closing "Very truly yours,".

Brian D. Thomas
Assistant Vice President

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OCT 20 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of the)
)
AMERICAN TELEPHONE AND)
TELEGRAPH COMPANY)
Petition for the Establishment)
of Additional Standards to Govern)
Study Area Boundary Changes in)
Connection with the Transfer of)
Service Territories Between or)
Among Local Exchange Carriers)

RM - 8334

COMMENTS

Pacific Telecom, Inc. (PTI), on behalf of its local exchange subsidiaries operating as PTI Communications, herewith submits its Comments in the above-captioned matter. As described herein, PTI believes AT&T has misstated both the regulatory context and scope of the current study area definition, which specifically anticipated sales of exchange properties of the kind now occurring. Further, AT&T's petition lacks any factual showing sufficient to warrant a new and separate rule-making, particularly given the "Suggestions" for study area waivers propounded by the Common Carrier Bureau on September 7, 1993 and the Commission's concurrent review of Universal Service Fund matters in CC Docket 80-286.

I. Introduction

AT&T's petition (i) argues that study areas were frozen in 1984, essentially for all time, (ii) complains that the Commission "nonetheless" continues to grant such waivers, and (iii) asserts that such waivers produce an "unduly increasing . . . USF burden on access ratepayers."¹ Each premise, and the resulting conclusion, is inaccurate. Contrary to AT&T's assertions, the current definition of study area was not developed to restrict future sales of exchange property, but to remove disincentives to such sales. Accordingly, waivers necessary to effect such sales were specifically within the contemplated scope of the definition, and the Commission's grant of such waivers fully squares with the intent of the definition. Further, AT&T raises no other factual concerns, not already being subjected to Commission consideration, which would serve to justify a second, parallel proceeding. Clearly, AT&T is simply shopping for another bite at the same USF apple, already the object of the Commission's eye in CC No. 80-286.

II. The Current Study Area Definition Was Expressly Established to Avoid Disincentives to Local Exchange Acquisitions.

AT&T's petition asserts that the Commission adopted the current definition of study area in response to Joint Board concerns about the potential adverse impact upon USF growth which would result, absent such a change in study area definition.² This is, at best, only partially true. In the present context of study area changes occasioned by acquisitions, it is wholly misleading.

¹ American Telephone and Telegraph Company, Petition for Rulemaking, Sept. 3, 1993, at (i) ("AT&T Petition").

²Id. at 2.

Review of the full Joint Board discussion makes clear that the adoption of the current "Study Area" definition did -- and was intended to -- affirmatively anticipate local exchange acquisition activity.

The prior Joint Board order³ upon which AT&T relies states:

65. The study area definition adopted by the Commission requires the averaging of NTS costs for separations purposes, including calculation of the high cost assistance, in the case of all companies within a state which are owned by a single holding company. This approach would eliminate differences in the overall level of assistance resulting from the number of separate companies a holding company owns within a state. It would also discourage companies from spinning off high cost exchanges as separate companies in order to maximize high cost support. [Emphasis added]⁴

But the phrase "[t]he study area definition," above, does not refer to the current study area definition.⁵ Rather, that phrase and these sentences refer to the predecessor definition of study area, as explained in Paragraph 64 of the same Joint Board order:

64. In the Second Recommended Decision and Order in CC Docket No. 80-286, the Joint Board recommended the term "study area" be defined as "a telephone holding company's operations within a single state" for separations purposes. The Commission subsequently adopted this definition. [Emphasis added.]⁶

This, and not the current formulation, was the definition at the time of the Joint Board's action in November of 1984, and to which Paragraph 65 refers. Since the previous definition of

³In the Matter of MTS and WATS Market Structure. Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, Recommended Decision and Order, 57 RR2d 267, released November 23, 1984 ("Recommended Decision").

⁴Id. at 290.

⁵The Appendix-Glossary to Part 36 of the Commission's Rules defines "Study Area" as "Study area boundaries shall be frozen as they are on November 15, 1984". 47 C.F.R. § 36.

⁶Recommended Decision at 289.

"Study Area" thus already foreclosed the prospect of adverse USF growth, it is unclear why the Joint Board would feel compelled to change that definition in order to avoid ". . . the potential adverse impact upon the growth of the USF that could result from study area changes,"⁷ as AT&T suggests.

The answer is that the Joint Board felt the predecessor definition, cited above, was too restrictive on the acquisition and disposition of local exchanges:

However, the present definition ["a telephone holding company's operations within a single state"] could also discourage the acquisition of high cost exchanges or the expansion of service to cover high cost areas since such undertakings would penalize existing study area customers through the averaging process.⁸

In the succeeding paragraph, Paragraph 66, the Joint Board squarely established the current study area definition as the means whereby both to avoid the internal subdivision of existing study areas (and resultant increases in high cost support) and to encourage beneficial acquisition activity:

66. The Joint Board recommends that study area boundaries in existence as of November 15, 1984 be frozen for separations purposes with high cost assistance calculated separately for each study area. Under this approach, an existing company study area purchased by a holding company which owned other companies within the same state could continue to be treated separately for separations purposes. Areas in which telephone service was instituted for the first time could also be treated as a separate study area if separately incorporated. In either case, the parent company would also have the option of folding the new service territory into one of its existing companies and using the average NTS costs for the expanded service area in determining the high cost assistance. We expect this to be the case when the benefits of consolidated operations exceed reduction in high cost support. However, companies would be prohibited from setting up high cost exchanges within their existing service territory as separate

⁷AT&T Petition at 2.

⁸Recommended Decision at 290.

companies to maximize high cost support. This definition would facilitate administration of the high cost fund, eliminate recordkeeping burdens, and remove the disincentive for purchase of high cost companies or expansion of service into high cost areas, which would result from the previously adopted definition. [Emphasis added.]⁹

This statement, being the paragraph AT&T cites and relies upon, categorically negates AT&T's position. It represents an articulate, reasoned, and thorough analysis of the issue, an analysis which AT&T fails to address in its Petition to the Commission. It formed an integral part of the Commission's decision to adopt the Joint Board's recommendations, including the new (current) study area definition:

14. Indeed, the Universal Service Fund mechanism adopted by the Commission in Amendment of Part 67 of the Commission's Rules, CC Docket No. 80-286, is predicated on precisely this assumption. In its November 15, 1984 recommendations, the Joint Board has affirmed our view that high cost assistance, targeted to recognize the special situation of customers served by smaller, rural telephone companies, is necessary to preserve universal service. Rate increases and the discontinuation of service by significant numbers of subscribers are not required to trigger the effectiveness of these measures. Lifeline rates should be available to protect low income subscribers, just as high cost assistance is available without a requirement that rate increases in rural areas cause subscribers to discontinue telephone service.¹⁰

AT&T's petition misstates the regulatory foundation upon which the existing study area definition was created. Far from being intended to exclude or restrain future acquisition of local exchange companies, the current definition of "study area" was expressly intended to avoid the creation of artificial, harmful barriers to such acquisitions. It was intended to remove

⁹Id.

¹⁰In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, Decision and Order, 57 RR2d 511, 515, released December 28, 1984.

"disincentives" to acquisitions. Given this precedent, AT&T's petition is legally unsound and should be dismissed.

III. AT&T's Factual Assertions Are Unsupported and Do Not Demonstrate a Need for a Rulemaking.

It may be argued that even though AT&T lacks an accurate legal premise for its Petition, it raises factual matters warranting the effort and expense of a separate rulemaking. Review of those matters confirms that a separate rulemaking is not factually justified, either.

AT&T's Petition proposes "the volume and magnitude" of local exchange transactions as a reason to review the study area waiver process.¹¹ It makes clear, however, that its real purpose in raising volume and magnitude issues is "to contain the growth of the USF that would result from these transactions"¹² The Commission has already acted to address such concerns directly, through the initiation of specific USF proceedings.¹³ In proposing to consider both interim and longer term revisions to the USF, the Commission has preempted AT&T's concern here and made it the subject of a comprehensive process. Especially considering that AT&T is not seeking a change to the "Study Area" definition itself, but only to the waiver process, the need for a proceeding separate from but parallel to and overlapping the current USF inquiry is undemonstrated and ill-advised.

¹¹AT&T Petition at 7.

¹²Id.

¹³Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, FCC 93-435, released Sept. 14, 1993.

Similarly, AT&T's expressed concern for increased information submissions as part of study area waiver applications has also been preempted, by the FCC Staff. In its "Suggestions" issued in September,¹⁴ the Common Carrier Bureau Staff proposed a set of eleven detailed information requests applicable to all applicants for study area waivers. The information requests were intended by Staff to afford ". . . a better basis for review of petitions, and will obviate or at least reduce the need for follow-up contacts and the delays that may result from such requests for supplemental materials."¹⁵ Comparison of Staff's requirements to those proposed in the AT&T Petition demonstrate that the former are more comprehensive and better suited to the purposes articulated than the latter, both as to USF-related information and as to general plant and operating data. Since parties to such transactions have the greatest interest in avoiding the "delays" recited by Staff and have responded to Staff requests for such information in the past, there is no reasonable basis to believe that Staff's "Suggestions" will be ignored in the future. A rulemaking is simply unnecessary to secure such information.

The last asserted basis for rulemaking -- the need to establish how much ". . . local ratepayers will assume [of] the cost burden of any planned upgrades in service"¹⁶ -- presumes too much, too soon, in too many areas. It presumes that the USF represents a "subsidy" of local exchange operations, which it is not. It presumes that local ratepayers are different from toll ratepayers, which they are not. It presumes that a "meaningful contribution to those added costs from local ratepayers" is not being made, which it is. And it presumes the existence of criteria

¹⁴FCC Public Notice, "Bureau Provides Suggestions for Parties Filing Study Area Waiver Requests," DA 93-1093, Sept. 7, 1993.

¹⁵Id. at 1.

¹⁶AT&T Petition at 12.

by which to determine the "balance" to be effected between high cost fund support and local exchange (and other intrastate) rates. This balance and those criteria represent key issues underlying the Commission's current inquiry into the Universal Service Fund. Study area waivers are the tail, not the dog, to such USF matters. Any attempt to address such serious public interest concerns, particularly where state jurisdictional issues are present, requires appropriate Commission focus, which treatment in a waiver proceeding will not provide. The scope of universal service and the source of funding therefor -- the true concerns of AT&T's Petition -- cannot and should not be dealt with indirectly, in the secondary context of study area waivers.

AT&T's Petition, upon examination, provides no independent factual basis for initiating a major rulemaking on the subject of study area waivers. To the extent factual issues are raised, they have largely been preempted by actions of the Commission or its Staff. The remaining issues involve serious public interest considerations affecting universal service. The Commission, correctly, has already commenced a specific examination of these issues in a specific proceeding.

If changes in study area matters are required, they are best discerned and shaped in that context, rather than in an isolated, redundant rulemaking.

IV. Conclusion

Yet another rulemaking is neither required nor desirable.¹⁷ AT&T's Petition, which antedates Commission and Staff actions concerning both universal service and study area waivers, was improperly grounded on past regulatory findings and has been rendered moot by subsequent events. The Joint Board and Commission discussion of the current "Study Area" definition confirm that current Commission practices accord with, and do not contravene, the anticipated occurrences of study area waivers relating to acquisition and disposition activities. Indeed, the current definition was developed specifically to avoid interference with such transactions.

The Petition's asserted need for USF, financial, and operating data has been addressed by Commission Staff through information guidelines. AT&T provides no evidence that those guidelines have been or will be ignored. The assertion that applicants for study area waivers need to show by how much local rates will increase in order to get a waiver is fatally a priori and one-dimensional. A multiplicity of serious public interest issues are intertwined in the

¹⁷This conclusion is doubly true, given the existence of a proposed rulemaking on this subject started, but not advanced, in 1990. See In the Matter of Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Notice of Proposed Rulemaking, CC Docket No. 80-286, 5 FCC Rcd. 5974, released October 10, 1990. Therein, the Commission expressed tentative conclusions very much along the lines which PTI is supporting here:

17. We tentatively conclude that the definition of study area waiver should be changed, and that our rules should allow carriers to establish new study areas within a single state without waivers or approval from this Commission when they: (a) combine existing study areas after merger of affiliate operations; or (b) purchase exchanges from or sell exchanges to unaffiliated parties. [Emphasis added]

Id. at 5975.

subject of universal service, and the Commission has already moved to address this complexity. The Petition and its focus on study area waivers is merely an attempt to circumvent necessary debate over these public interest issues, in order to benefit AT&T's operating margins. The Petition should not be granted.

Respectfully submitted,

PACIFIC TELECOM, INC.

By: /s/ Donn T. Wonnell

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